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No. 85-1396

In The

Supreme Court of the United States

October Term, 1985

WILLIAM B. ROYSTER,

Petitioner,

v.

BOARD OF TRUSTEE OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5, TONY TURNER, EDWARD W. MORGAN, W. FRANK KELLAM, AND A. FRED STRINGER, JR., AS MEMBERS OF BOARD OF TRUSTEES OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5 AND AS INDIVIDUALS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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STATEMENT OF THE CASE

1. Procedural History

This is an action for damages based upon 42 *U.S.C.* § 1983, which arose from the mid-year termination of the Petitioner William B. Royster as superintendent of Anderson County School District Number Five. In his original and amended Complaints Royster also sought damages for defamation, breach of contract, outrage, invasion of privacy and deprivation of a liberty interest under § 1983. Respondents are the Board of Trustees for An-

derson County School District Number Five and then Trustees Tony Turner, Edward W. Morgan, W. Frank Kellam and A. Fred Stringer in their official and individual capacities. This action was filed in July 1983. Following motions for summary judgment being filed by both sides, Royster's claims for defamation, outrage, and deprivation of a liberty interest were either dismissed or withdrawn.

The case was tried over a three day period beginning April 3, 1983. During the trial the Board *stipulated* that it had breached Royster's contract and agreed for the Court to set damages based upon 26 days of unpaid annual leave. The Court directed a verdict against the Board of Trustees on the issue of liability concerning the deprivation of a property interest predicated on § 1983. The Court also granted Morgan and Turner a directed verdict on the invasion of privacy claim which had been asserted against them. On April 5, 1984, the jury returned a verdict awarding Royster $75,000.00 actual damages against the Board, Turner, Morgan, Kellam and Stringer and also assessing $750.00 punitive damages against Turner, Morgan, Kellam and Stringer. The jury did not assess damages against Trustee Joe O. Bolt. On April 23, 1984, Judgment was entered on the jury verdict. A motion for Judgment N.O.V. or a New Trial was filed on behalf of the Board, Turner, Morgan, Kellam and Stringer which was denied.

On July 23, 1984 notice of appeal was filed with the Fourth Circuit Court of Appeals. The Fourth Circuit reversed the District Court holding that Royster did not have a constitutionally protected property interest in continuing to physically hold his job position in defiance of

the Board's desire to relieve him of his duties. (Appendix A to Petition for Cert. at Page A-13). The Fourth Circuit further held that any constitutionally protected property interest enjoyed by Royster was satisfied by the payment of his compensation under his contract. (Appendix A to Petition for Cert. at Page A-14). Royster subsequently filed a Petition for Re-Hearing which the Fourth Circuit denied as being without merit. (Appendix A to the Petition for Cert. at Page A-16).

Royster filed his Petition for Certiorari to the United States Supreme Court on February 19, 1986.

2. Statement of Facts

William B. Royster was the superintendent of Anderson County School District Number Five, Anderson County, South Carolina from January 1967 until January 11, 1983. (Tr. pp. 1-26, lines 9-10). The Board of Trustees of Anderson County School District Number Five has the management and control of the school district pursuant to § 59-19-10 of the Laws of South Carolina (1976). Turner and Morgan were members of the Board during late 1982 and early 1983. Kellam and Stringer became Board members in January, 1983. On September 23, 1982, Royster was denied a one year extension to his contract. On January 5, 1983, the Board discussed the possibility of Royster resigning, taking medical leave or being terminated. On January 11, 1983 after declining to take medical leave or resign, the Board passed a motion relieving Royster of his duties as superintendent effective immediately with full pay and benefits through June 30, 1983, the effective date of his contract. Between January 11, 1983 and June 30, 1983, Royster was paid the compensation due him under

the contract, in the form of a monthly check, which he accepted and negotiated.

The principal issue before the district court was whether Royster possessed a constitutionally protected property interest in continued employment through June 30, 1983 and whether he had been deprived of it without due process. Royster's case was premised upon the allegation he was fired for cause, without being given reasons and without being given a due process hearing in violation of the Termination Clause of his contract.

The Board and Trustees contended, without any contradictory evidence being offered, that Royster was not fired for cause, no reasons were disclosed, he never requested reasons nor did he request a name clearing hearing. Royster's contract was bought up and he was relieved of his duties with full pay and benefits through June 30, 1984. It was also asserted that even if Royster was entitled to some type of due process, he waived that right by failing to ask for a hearing and by accepting the remuneration tendered by the District.

The district court, directed a verdict against the Board on the issue of liability on the property interest claim, finding that Royster was dismissed in contravention of the parties contract (Fourth Circuit Joint Appendix at page 360, lines 14-15). The district court further found, as a matter of law, that Royster was not afforded minimum due process, he did not waive his procedural rights because those rights were mandatory under the contract, the contractual procedure for discharge for cause was not followed and the opportunity to be heard was not

established because of Royster's known medical condition, the Board's late hour decision and the immediate replacement of an interim superintendent. Acceptance of benefits, if not the total benefits due, also does not constitute a waiver of one's procedural rights. The district court failed to direct a verdict in favor of the individual trustees on the basis of qualified immunity when the only evidence presented was that they were following the advice of counsel and performing the discretionary function of administering to the needs of the school district in relieving Royster of his duties.

The Appeal to the Fourth Circuit focused upon the issues of whether Royster had a constitutionally protected property interest in continuing to perform his job function in view of the fact that he had been relieved of his duties and paid his benefits; whether the District Court erred in failing to direct a verdict in favor of the trustees in their individual capacities on the basis of qualified immunity; in failing to charge the defense of waiver concerning Royster's acceptance of benefits; in the errors contained in the charge to the jury and the District Court's error in admitting into evidence newspaper articles editorializing the action of the Board as it related to Royster.

The Fourth Circuit reversed the District Court by holding Royster did not have a constitutionally protected property interest in continuing to occupy the position of superintendent once he had been relieved of duties and paid his benefits. (Appendix A to Petition for Cert. at pages 13-14).

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REASONS FOR DENYING THE WRIT

The Decision Of The Fourth Circuit Court Of Appeals Does Not Negate The Compensation Principle Of Carey v. Piphus; Nor Does It Disregard The Holding Of Board Of Regents v. Roth In Determining Constitutionally Protected Property Interests

The decision of the Fourth Circuit does not conflict with the "full compensation principle" enunciated by this Court in *Carey v. Piphus*, 435 U.S. 247 (1978). The decision does not discuss compensation nor damages. Rather, the Court of Appeals focused in on the critical issue of whether Royster had a constitutionally protected property interest under the criteria set forth in *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth* this Court held that in order to establish such a property interest in a benefit [job]:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . .
>
> Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. . .
>
> In deciding whether a person possesses a property interest a court must carefully sift through abstract needs and unilateral expectations until it locates a legitimate claim of entitlement. 408 U.S. at 577.

The Court of Appeals concluded that Royster did not have a constitutionally protected property interest in con-

tinuing to actively engage in and execute the duties of his office after he had been relieved of his duties, but with full salary and benefits through the end of the contractual period. (Appendix A of the Petition for Cert. at page A-13). The Court of Appeals correctly reasoned that not every breach of public employment contract amounts to a constitutional deprivation. *Kilcoyne v. Morgan,* 664 F.2d 940, 942 (4th Cir. 1981); *Sigmon v. Poe,* 564 F.2d 1093, 1096 (4th Cir. 1977). (Appendix A of the Petition for Cert. at page A-13). The Court of Appeals correctly identified the severe hardship which would be placed on public employers who could not relieve an employee with whom they were dissatisfied, but without specific cause to discharge, even if they were willing to compensate him fully under the terms of the contract. (Appendix A of the Petition for Cert. at page A-13).

Royster now seeks to assert the position, raised for the first time in his Petition for Rehearing, that state law provides Royster with the constitutionally protected property interest in continuing to occupy his job position. He relies on the case of *Tracey v. Sconnix Broadcasting of South Carolina, Inc.,* 284 S.C. 379, 325 S.E.2d 542 (S.C. 1985) for the proposition that under South Carolina law a contract of employment gives the employee a constitutionally protected property interest in his job title and duties. Counsel for Royster, when citing *Tracey,* have continuously failed to quote one important clause from the Court's holding that violation of the term of the contract will support an action by the employee for damages *for breach of contract.* (emphasis added). Each time this case was cited by Royster in his Petition the reference to breach of contract has been intentionally omitted.

Respondents have always admitted they breached Royster's contract, this was stipulated to at the trial; but likewise they have always contended the breach of an employment contract does not become a constitutional violation merely because a governmental agency is a party to the contract. *Kilcoyne v. Morgan, supra.* However, under the facts of this case he did not have a constitutionally protected property interest in continuing to perform his job duties against the direct wishes of the Board. Any expectation of being allowed to continue to occupy the position of superintendent against the wishes of the Board was a unilateral expectation on his behalf, therefore, not subject to constitutional protections. See: *Board of Regents v. Roth,* 408 U.S. at 577.

In *Cleveland Board of Education v. Loudermill,* — U.S. —, 105 S.Ct. 1487, 1495 (1985), Justice White delivering the opinion of the Court wrote: "Finally, in those situations where the employer perceives a significant hazard in keeping the employee on the job, it can avoid the problem by suspending with pay." If the problem (constitutional deprivation) can be avoided by suspending with pay, surely it can be avoided by relieving the employee of his duties with full salary and benefits for the term of the contract.

Respondents assert the Court of Appeals correctly held that Royster did not have a constitutionally protected property interest under the unusual facts presented in this case. Any expectation Royster had of continuing to perform as superintendent of School District Number Five after being relieved of his duties by the Board and promised his full salary and benefits under his contract was a unilateral expectation on Royster's part, therefore, not a

property interest which is afforded protection under the Constitution of the United States.

The Decision Of The Court Of Appeals Does Not Conflict With The Decision Of The Sixth Circuit In Stachura v. Truszkowski

Royster contends the decision of the Fourth Circuit in this case conflicts with the decision of the Sixth Circuit in *Stachura v. Truszkowski,* 763 F.2d 211 (6th Cir. 1985), cert. granted sub nom., *Memphis Community Schools v. Stachura,* 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410) and also conflicts with *Robinson v. Houston-Galveston Area Council,* 566 F.Supp. 370 (S.D. Tex. 1983). Respondents assert these cases are distinguishable on the facts. Any alleged conflict is the result of a misapprehension of the facts of these cases and the attempted illogical extension of liability under § 1983.

In *Stachura,* a public schoolteacher was suspended with pay and reprimanded following allegations raised against him in a public meeting of the School Board. The allegations concerned his teaching human reproduction and included allegations that he was a "sex maniac." Public statements concerning the employee were apparently also made by members of the school board and the superintendent. Extensive publicity was reported in the local media including public allegations and charges made against Mr. Starchura. The meeting of the school board was open to the public and allegations against the teacher were aired in public.

In *Robinson,* a district court case, the metropolitan health commissioners had their positions terminated with-

out a showing of "good cause only" in violation of federal regulations. The district court further held that a benefit need not be of an economic value in order to qualify as a property interest. *Robinson,* 566 F.Supp. at 377. However, in order to be a constitutionally protected property interest, the entitlement must be legitimate not a mere abstract or unilateral expectation. *Roth,* 408 U.S. at 577.

The facts in this case prove that Royster has failed in meeting the threshold requirement of establishing a constitutionally protected property interest. In order for Royster to have such an interest, in continuing to perform his duties against the wishes of the Board and after he has been promised his full salary and benefits under his contract, the state of the law must have evolved to a position that employers no longer have any control over their employees or their business decisions.

Here, all the Board and Trustees wanted to do was perform their sworn public duty to effectively manage the school district. The Respondents brought no charges against Royster; they made no public disclosure of the reasons for their decision; Royster was relieved of his duties with full salary and benefits. Rather, the decision to relieve Royster was made in closed/executive session and no comments were made by any of the Respondents concerning any reasons for the decision. Moreover, *Royster never asks for the reasons he was being relieved nor did he ever request a hearing to present his view.*

Royster, on appeal to the Fourth Circuit and now in his Petition for Certiorari, alleges his property interest is grounded on the basis that he was denied the opportunity to perform the normal activities of his position from Jan-

uary 11, 1983 until June 30, 1983. After a careful review of the entire record, there is not one shred of evidence that Royster considered the performance of his job to be the property interest he was entitled to under his contract, all of the testimony at trial dealt with salary, leave and retirement benefits.

First, the expectation of being allowed to continue performance of one's job after being relieved of your duties and being promised all the salary and benefits due under a contract can only be considered a unilateral expectation and not the type of property interest afforded constitutional protection. If this is not a unilateral expectation a governmental agency which is dissatisfied with the performance of a contractual employee could never satisfy their obligation to make payments of full compensation due under the contract and excuse the employee from further performance of his job functions without facing a § 1983 claim for damages.

The purported conflict between this case and the decisions in *Stachura* and *Robinson* are imaginary. Here, all Royster can establish is a unilateral expectation of being allowed to perform his job activities after being relieved. There was no public disclosure by the Respondents in this case. Royster did not request any reasons for the Board's decision nor did he request an opportunity to explain his views. Royster was not discharged for cause. Royster was not stigmatized by the Board's discretionary decision to relieve him with full salary and benefits because no charges were brought against him.

In *Cannon v. Beckville Independent School District*, 709 F.2d 9 (5th Cir. 1983), the Court of Appeals in ad-

dressing the issue of whether Cannon was entitled to damages because of the denial of a hearing after his mid-year termination as superintendent held:

> The Board did nothing which could be said to have reflected against Cannon except by its decision not to renew. The Board paid Cannon the full amount due him under the existing contract. Despite Cannon's arguments, here, he did not request a hearing by the Board on the cause for his being relieved. The only correspondence from his attorney requested negotiations to settle Cannon's claim under the alleged extended contract. Id. at 11.

Again, the Board levied no charges against Royster, he did not request reasons nor a hearing and the only contact between Royster, through his attorney, and the Board was a letter of July 14, 1983 attempting to settle the dispute concerning unused vacation and sick pay. (Joint Appendix to Fourth Circuit at 422).

The decision of the Fourth Circuit was predicated on the unusual facts of this case and the genuine concern that public employers not be stripped of all managerial power. The Petition filed by Royster does not provide proper grounds for the issuance of a writ of certiorari.

The Decision Of The Fourth Circuit Does Not Negate Important Protections Conferred Upon Public Employees.

The decision of the Court of Appeals in this case does not offend the constitutional principles of due process nor detract from protection afforded the public employee under the Constitution of the United States. This case because of its unusual facts serves as a line of demarcation in the area of § 1983 claims. When a salaried public em-

ployee is excused by his employer from performing the remainder of his duties under his contract of employment, paid all of his benefits, and no charges or allegations brought against him it cannot be said that he has been deprived of a protected property interest without due process of law. To hold otherwise would undermine the authority of governmental agencies to control their employees, manage effectively and efficiently and place the employee in charge of the employer.

The Court Of Appeals' Decision Does Not Conflict Nor Offend The Full Compensation Principle Enunciated In Carey v. Piphus, Perry v. Sindermann and Logan v. Zimmerman Brush Co.

Royster again seeks to mislead the Court in arguing that the Fourth Circuit's decision in this case conflicts with the concept of full compensation for constitutional torts. See: *Carey v. Piphus,* 435 U.S. 247 (1978); *Perry v. Sindermann,* 408 U.S. 593 (1972) and *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The Court of Appeals' decision does not even address the issue of damages or compensation because it was held that Royster did not have a constitutionally protected property interest in continuing to perform his job duties against the wishes of the Board. (Appendix A to Petition for Cert. at pages A-13 & 14). Respondents agree that the principle of full compensation for actual damages would apply if Royster had established liability for a constitutional tort. This issue was not argued in the lower courts and there is no dispute concerning the principle of full compensation. This argument also fails to state sufficient grounds upon which to issue a writ of certiorari.

CONCLUSION

For the reasons presented hereinabove, Respondents respectfully request that a writ of certiorari should not be granted to review the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

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